IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 2 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
GUJARAT REFRATORIES LIMITED - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Ms Mona Bhatt, learned counsel for the revenue. None for the assessee, though served.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench “B” has referred the following question to this Court for its opinion, which arises out of Income Tax Appeal No.4525/Ahd/1991 in relation to assessment year 1991-1992.

> “Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) cancelling the additional tax levied u/s. 143(3)(1A) on the ground that such additional tax was not levidable on negative income?

It is to be seen from the order passed by the Tribunal, so also the question referred to us that additional income tax was levied under section 143 (1A) but the CIT (Appeals) and the Tribunal held that in view of section 143(1A) of the Act, such additional tax could not be levied.

2. The Supreme Court in the matter of Assistant Commissioner Income Tax V. J.K. Synthetics Limited and Union of India V. Modi Cement reported in (2001) 251 ITR

200, has observed that in view of amendment of Section (1A) with its retrospective effect, the Assessing Officer after adjusting the loss, in the return of loss would be entitled to demand additional tax, if the return is converted into return of profit.

3. In view of the said authoritative pronouncement of the Supreme Court, we cannot uphold the order of CIT, which was confirmed by the Tribunal. The said orders are quashed. The Reference is answered in favour of the revenue. It is accordingly disposed of. No costs.

(R.S.GARG,J.)

(M.R.SHAH,J.)

shekhar/-